

**Latin Business Association and Miscellaneous Warehousemen, Drivers and Helpers, Local 986, International Brotherhood of Teamsters.**  
Cases 21-CA-31392 and 21-RC-19649

February 7, 1997

**ORDER DISMISSING PETITION FOR  
DECLARATORY ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND HIGGINS

On January 9, 1997, the General Counsel filed a Petition for Declaratory Order under Sections 102.105 through 102.107 of the Board's Rules and Regulations to determine whether the Board would assert jurisdiction over Latin Business Association (the Employer). On January 21, 1997, the Employer filed a response.

The General Counsel's petition and supporting argument allege the following:

(1) The Employer is a California nonprofit corporation whose mission is business development, advocacy, and education for Latino-owned businesses. It has about 400 members including full members, associate members, corporate members, and student members, and engages in activities with and on behalf of its members. These activities include informing members about contracts out for bid; conducting general membership meetings for networking; and organizing educational seminars for its members on issues such as marketing, sale techniques, financial management, and taxes. On a sporadic basis, the Employer targets large corporations that it concludes could be doing more business with its members. It also engages in joint ventures to award scholarship funds to students.

(2) An unfair labor practice charge was filed against the Employer on June 10, 1996, in Case 21-CA-31392, and a representation petition involving the Employer was filed on May 16, 1996, in Case 21-RC-19649.

(3) During 1995, the Employer's gross revenues included \$313,017 from two fundraisers (not including \$15,468 in accounts receivable); \$139,596 for dues (not including \$522 in accounts receivable); \$37,768 for advertising revenue from space sold in programs at fundraiser events (not including \$6977 in accounts receivable); \$10,405 from admission fees to general membership meetings; \$5683 from other income; and \$1710 from the sale of exhibitor tables at its events; for a total income of \$508,179 for 1995.<sup>1</sup>

Expenditures for 1995 include \$174,936 for salaries, taxes, and workmen's compensation insurance; \$56,944 for printing costs; \$50,168 for event occu-

pancy costs; \$38,303 for food and meeting expenses; \$31,077 for office rental; \$25,962 for office supplies; \$25,253 for equipment rental; \$21,679 for accounting fees; \$18,440 for legal fees; \$15,917 for postage; \$13,508 for awards and prizes; \$9710 for entertainment; \$9157 for employee medical insurance; \$7162 for flowers and decorations; \$5432 for general insurance; \$5416 for recruiting; \$4900 for auditing; \$4197 for public relations services; \$4023 for photography; \$508 for taxes, licenses; for a total of \$522,692 in expenditures. Of these expenditures, out-of-state purchases include general insurance fees paid to an in-state agent for coverage by an out-of-state carrier; \$2455 for office supplies purchased out-of-state; and postage costs.

(4) There are no known proceedings involving the same jurisdictional question before any other agency or court.

In support of the petition, the General Counsel argues that the Employer is a business membership organization and that the Board has not established a jurisdictional standard for such associations.<sup>2</sup> The General Counsel further contends that a jurisdictional standard will have to be set in the pending unfair labor practice and representation proceedings because the Employer's annual gross revenues do not clearly exceed any analogous standard.<sup>3</sup> The General Counsel notes in this respect that the Board's jurisdictional standards range from \$50,000 for nonretail; \$250,000 for day care centers, social service organizations, law firms, and legal service corporations; \$500,000 for apartment houses; and \$1 million for art museums, cultural centers, libraries, colleges, and universities. The General Counsel states that the Employer's annual gross income appears to be slightly less than \$500,000. In these circumstances, the General Counsel asserts that a Declaratory Order is appropriate. Further, the General Counsel argues that the Board should adopt a \$250,000 jurisdictional standard for business membership organizations, because statistical data compiled by the Bureau of the Census indicates that a \$250,000 standard would cover 44 percent of the employers in that census category and 84 percent of the employees employed by such employers. Applying this standard, the General Counsel concludes that the Board should assert jurisdiction over the Employer.

The Employer, in its response to the petition, disputes the revenue and expense figures provided by the General Counsel, and contends that the Employer's out-of-state purchases amount to \$2455 annually, less than one-half of one percent of its total expenses. The

<sup>2</sup> See, e.g., *New York State Nurses Assn.*, 232 NLRB 849 (1977); *California Medical Assn.*, 223 NLRB 201, 202 fn. 7 (1976).

<sup>3</sup> See *Hispanic Federation for Social Development*, 284 NLRB 500, 501 (1987); *New York State Nurses Assn.*, supra; and *California Medical Assn.*, supra.

<sup>1</sup> However, the General Counsel further states that a subsequent submission by the Employer to the General Counsel gave differing figures for some of these items and thus, it appears that the Employer's gross revenue may have been slightly less than \$500,000.

Employer argues further that its insurance purchase is not an out-of-state purchase. The Employer contends that its revenues were less than \$500,000<sup>4</sup> and that its combined direct and indirect outflow and inflow was less than \$50,000.

In addition, contrary to the General Counsel, the Employer requests that the Board establish a jurisdictional standard for local nonprofit business membership associations such as itself which requires gross annual revenues in excess of \$500,000 and annual direct and indirect inflow in excess of \$50,000. Under this standard, the Employer contends, the Board should decline to assert jurisdiction over its operations.

Having duly considered the matter, we have decided to deny the petition because of the inadequacy of the record and because certain essential facts are in dispute. We find, in the circumstances, that it would be

desirable to decide the appropriate jurisdictional standard for this type of enterprise on the basis of a complete record after a hearing. At a hearing on the unfair labor practices charge or the representation petition, or both, all interested parties would have the opportunity to introduce evidence, to examine and cross-examine witnesses, to file briefs, to argue orally, and to participate to the extent necessary to present their positions. Consistent with past Board decisions in cases where the facts are in dispute, we find that these procedures are necessary to enable the Board to make an informed judgment on the jurisdictional issue that has been raised.<sup>5</sup> Accordingly,

IT IS ORDERED that the Petition for Declaratory Order is denied.

<sup>5</sup> See *Beverly Farm Foundation*, 215 NLRB 401 (1974); *Reynolds Metal Co.*, 134 NLRB 1187 (1961); and *National Bulk Carriers*, 134 NLRB 1186 (1961). See also *Brooklyn Bureau of Community Service*, 320 NLRB 1148 (1996).

<sup>4</sup>The Employer does not specify its annual revenues.